

From: Katzin.Marcy@epa.gov
To: Tiwamarcus@aol.com
CC: WILHITE.TIMOTHY@EPA.GOV

Hi, Creig,

Thanks for sending the draft MOU. I don't have a lot of experience with this kind of MOU, but am taking a stab at comments. Some thoughts are below and in the attached document.

Here goes:

The general purposes of the MOU are described. What are the specific goals? What generally is expected from the County and what is expected from the Tribe? (Not sure if this question makes sense, but I keep coming to it.)

The opening paragraph includes Mosquito Vector Control. The rest of the MOU seems to focus on agriculture. If the tribe wants information on Mosquito Vector Control (good idea), then the rest of the MOU (purpose and responsibilities) should include language throughout indicating that mosquito vector control is included. Does the county do any other types of applications (like rights-of-way) or rodent vector control that should be covered under the MOU?

Section VII seems to address sovereignty. It seems critical to also ensure that this agreement does not in any way constitute an agreement that the county has any regulatory authority (like conducting inspections) in Indian country. I strongly encourage legal review by the tribe's attorney.

Are there other specific AIR issues or concerns to address? For example, might the County want to conduct Mosquito Vector Control spraying where the tribe collects various materials for medicine, food, basketweaving, etc.? (See comment in document.)

If the County will be doing pesticide applications on Indian lands, it is important to include in III.B. that the County will follow AIR requirements.

Section III.C seems to commit the tribe to pay the County, but section IV says that the MOU does not impose financial requirements. Suggest removing language in section III.C. that says the tribe will remit money and instead saying that the tribe and county may enter into separate contracts for applications for mosquito vector control – or whatever applications need to be covered.

On a separate note, I don't know if there are any schools or day care centers on AIR. Just in case, thought you might like to know that the University of Arizona developed an IPM in Schools Plan template for tribes. Here's the link to the page where you can find the template under Publications:

<http://ag.arizona.edu/apmc/westernschoolIPM.html>

Thanks again, Creig, for sending the draft MOU.

Take care.

Marcy

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From: Tiwamarcus@aol.com [mailto:Tiwamarcus@aol.com]
Sent: Tuesday, March 03, 2015 7:51 PM
To: Katzin, Marcy
Cc: Wilcoxon, Katy
Subject: Re: Draft Pesticide Ordinance - Comments from R9 Pesticides Office

Hi Marcy and Katy:

Thank you for the excellent comments, suggestions, questions - it is greatly appreciated and as I work through them it will educate more on the issues.

RTOC in May would be good, I should have answers and changes before then that I will incorporate; those that I need help on we can discuss then.

I attached a proposed MOU with the County. They had never done one so I did not have much to go on, I read dozens of websites and culled together a draft. In all my tribal contacts no one had done an MOU like this. So your thoughts or suggestions would be appreciated.

Thanks again,

Creig

(Did Tim get you a copy of my Pesticide Workshop and materials? I sent him a copy on a USB drive - if not I have an extra one I can send you)

In a message dated 2/27/2015 9:25:50 A.M. Pacific Standard Time, Katzin.Marcy@epa.gov writes:

Hi, Creig,

Thanks very much for sending the draft Pesticides Ordinance to us for a program review. We compliment you on a very good first draft! Not easy to put together since there are not many models.

Since a large portion of the draft Pesticides Ordinance is about certification, my co-worker Katy Wilcoxon also reviewed the draft. (Thank you, Katy.) Collectively, we have some questions and comments that we hope will be helpful. Our comments are only from the program, and do not include any legal input.

1. Unless a tribe has an EPA-approved certification plan, any applicator who is applying RUP's in Indian country is required to be federally certified. (FYI - We base the federal certification on state certification.) (See comments in the document for where this language should be added.)

2. Will certifications issued by AIR be based on state and federal certification or is the tribe intended to establish a tribal certification plan in lieu federal certification? (A tribal certification process based upon state and federal certifications does NOT require EPA approval. A Tribal Certification Plan in lieu of federal certification DOES require EPA approval.)

If a government employee is not certified, is s/he allowed to apply general use pesticides under the supervision of a properly certified applicator?

4. Will the tribe rely on the state's determination of competence (as it seems in IX.A.1) or is the tribe conducting its own competency determination in the form of a test (as it appears in VII.A.)?

(We think it would be less burdensome on the tribe to accept state's and fed's determination of competence in the category, and require additional training on tribal requirements that are different from state and federal ones.)

5. EPA certification and training regulations are changing this summer. We don't yet know all the details of what is going to be different, but there could be some impact on the federal definition of "under the direct supervision of" and the categories.

6. What is the source of the list of categories in the draft AIR Pesticides Ordinance? There may be some conflicts between California's categories and the categories in the Ordinance. For example, California does not have a category for predator pest control and does have a category for soil fumigants. There may be a way to simplify the Ordinance language so that these conflicts don't exist and also eliminate questions as to whether some of the categories in the draft Ordinance are applicable to AIR (for example, seed treatment and grain fumigation control).

7. Is EPD going to be the "implementer" of the Ordinance? If so, it is important to make sure that this authority is clear where needed in the Ordinance.

8. It would help to clarify some terms in the Ordinance. (See specific comments in the attachment.)

Katy and I are available to talk through any of the comments. If you're going to be at the RTOC in May, we may have some time then.

Thanks very much, Creig. Great first draft!

Marcy

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Sent: Monday, February 09, 2015 4:15 PM

To: Katzin, Marcy

Subject: Draft Pesticide Ordinance

As I reviewed or redrafted each line, I kept in mind our different challenges.

I tried to keep in mind our future Green Ordinance, so I can incorporate that by reference without having to redraft the entire Pesticide Ordinance.

Your thoughts, edits and recommendations are appreciated.

Have a great day!

Creig Marcus